



# Risky Business

*What can happen to you as a notary and how to protect yourself*

# Marc L. Aronson

President and CEO

Pennsylvania Association of Notaries

One Gateway Center, Suite 401

420 Fort Duquesne Boulevard

Pittsburgh, PA 15222

800-944-8790, Ext. 113

[maronson@notary.org](mailto:maronson@notary.org)



# What can happen to you

- **Impostor Scenario** - An “impostor” comes before the notary pretending to be the person named in the document. The impostor presents the notary with what appears to be valid ID.

The notary notarizes the document based on the personal appearance of the signer and the ID presented.

The person named in the document never did appear before the notary and did not sign the document.



# What can happen to you

- **Claimant Makes False Claim Scenario** - A claimant alleges that he or she did not sign the document in question. Generally, the claimant does not provide all of the information the insurer requests in order to fully document their claim.

Investigation shows the notary has a journal entry for the notarization and determines that the evidence indicates the claimant actually did sign the document.



# What can happen to you

- **Capacity Scenario** - A claimant (usually a family member of the signer) alleges that the signer of the document did not have the mental capacity to know what he or she was signing.

The document in question is typically a Power of Attorney or Will, the notarization is usually performed in a nursing home or hospital, and the claim typically is not filed until after the signer of the document is deceased.



# What can happen to you

- **Absentee Signer Scenario** - The signer of the document does not actually appear before the notary. Instead, a third party (usually the notary's co-worker or supervisor or the spouse or a friend of the signer) brings the notary a document that has already been signed.

The third party attests that the signer actually signed the document but cannot personally appear due to an unusual circumstance (out of town, ill, does not have ID, etc.). The notary relies on the third party and notarizes the document despite the fact that the signer did not personally appear.



# Statute of Limitations

A notary can be held liable for a notarial act performed many years ago, even if the error is not discovered until many years have passed (on a deed, for example).

The statute of limitations begins tolling when:

- The error is or should have been discovered, or
- Some action is taken by the aggrieved party.



# Bond Requirement

## **MCA 1-5-619(4)(d). Notary public qualifications -- commission -- renewals.**

- Obtain an assurance in the form of a surety bond or its functional equivalent in the amount of \$10,000.
- Must cover acts performed during the term of the commission.
- The surety or issuing entity is liable if the notary violates a law with respect to notaries public.
- The notary may perform notarial acts only during the period that a valid assurance is on file with the secretary of state.





# Bond Requirement

## **A surety bond protects your CUSTOMER.**

- Bond has a \$10,000 limit.
- If a claim is paid, you have to repay the surety.
- If the claim exceeds the bond limit, you pay the difference.

## **Errors and Omissions (E&O) insurance protects YOU.**

- Available at various policy limits.
- E&O is primary; it pays before the bond.
- If a claim is paid, you do not have to repay the insurer.



# Bond vs. Insurance

Surety Bond	Errors & Omissions Insurance
<b>Three-party agreements</b> Surety, principal, obligee	<b>Two-party agreements</b> Insurer, insured
<b>Losses not expected</b> Surety takes only safe risks	<b>Losses expected</b> Rates must cover losses and expenses
<b>Losses recoverable</b> Surety expects to recover losses from the principal	<b>Losses usually not recoverable</b> Insurer doesn't expect to be repaid by the insured
<b>Premiums cover expenses</b>	<b>Premiums cover losses and expenses</b>
<b>Sureties are selective</b> Surety will not issue bonds to bad risks	<b>Insurers write policies for most risks</b> Appropriate rate, large volume



# Cost of E&O Insurance

Policy Limit	\$10,000	\$15,000	\$25,000	\$50,000	\$100,000
Price Range	\$50-\$60	\$65-\$75	\$75-\$85	\$150-\$170	\$300-\$350

Defense costs are covered inside or outside the policy limits depending on the insurance company.



# Cost of E&O Insurance

Policy Limit	\$250,000	\$500,000	\$1,000,000
Price Range	\$500 per year	\$500 per year	\$500 per year

Defense costs typically are covered outside the policy limits depending on the insurance company.  
Policies at this level are underwritten.



# Notary Claims

- **\$50,000 E&O policy** **\$14,860.21 paid out in expenses**
  - 2008 notarization, 2015 claim
  - Notarized false signature on oil and gas lease
  - Signer not present at the time of notarization
- **\$50,000 E&O policy** **\$3,617.76 paid out in expenses**
  - Sale of a motor vehicle
  - Signer not present at the time of notarization
  - Settlement reached for \$2,800



# Notary Claims

- **\$30,000 E&O policy** **\$5,026.96 paid out in expenses**
  - 2013 notarization, 2015 claim
  - Notary admitted signer never appeared in person
  - Only loss was the legal fees to defend
- **E&O policy** **\$7,500.00 paid out in expenses**
  - Claimant stated he did not sign a mortgage refinance document
  - Signature was forged
  - Notary not negligent; insurer agreed to amicable settlement



# Notary Claims

- **E&O policy** **\$3,000.00 paid out in expenses**
  - 2004 notarization, 2015 claim
  - Claimant, in prison, denied he could have signed the document
  - Notary could not locate her journal; former employer closed
- **\$10,000 bond** **\$10,000.00 paid out in expenses**
  - Claim for \$25,000
  - Lumber agreement signed 2013
  - Signers were deceased in 2003, 2007
  - Sellers forged signatures; wife of one was a friend of the notary



# Education

- Review the information provided on the Secretary of State's Web site, [sos.mt.gov/notary](http://sos.mt.gov/notary).
- Take advantage of available notary education.
  - Live classes
  - Online education
  - Private seminars
  - Biennial conference
- Review the *Montana Notary Public Handbook*.
- Successfully pass the examination (if required).





# Maintain your commission

- File your request for commission (new and renewal) within 30 days of the bond's effective date, if one is shown on the bond.
  - Requests for reappointment cannot be made more than 30 days before the expiration date of the current commission.
- Make sure your notary stamp and journal meet all requirements.
- Notify the Secretary of State's office within 30 days of any change in your personal information.
- If you do not have a valid commission, do not notarize.



# Notary Journal

- A notary journal is highly recommended, even in states where notaries are not required by law to keep journals.
- Your journal is your best defense against accusations of wrongdoing. Keeping a notary journal:
  - Serves as a “checklist” of the steps for every notarization;
  - Helps you recall details of every transaction;
  - Establishes the regular pattern of your actions when you notarize;
  - Shows diligence in performing the duties of your office; and
  - Eliminates one of the common causes of sanctions by the Secretary.



# When to Refuse Service

- Montana notaries are authorized to refuse to perform notarial acts when:
  - There is any doubt as to the signer's ***identity***;
  - There is any doubt as to the signer's ***competency and willingness*** to sign the document;
  - There is any doubt as to whether the signer is ***knowingly or voluntarily*** signing the document; or
  - No other law specifically ***prohibits refusing*** to perform the notarial act.



# Costly mistakes notaries have made

- Notarized for signer(s) who did not appear in person.
- Failed to properly identify signer(s).
- Forged signatures and notarized them.
- Notarized documents on which the notary was named.
- Failed to keep custody and control of the notary stamp.
- Impersonated a notary (commission had expired).
- Allowed another individual to use the notary stamp.
- Failed to keep an accurate notarial journal.



# Costly mistakes notaries have made

- Failed to include or complete the notarial certificate wording.
- Charged fees in excess of the fees allowed.
- Failed to maintain the required surety bond.
- Made materially false statements on application for notary commission.
- Lacked good moral character and integrity, evidenced by conviction for crimes of “moral turpitude” (theft, fraud, lying).
- Failed to be familiar with the duties and responsibilities of the office of notary public.



# The Secretary of State Can:

- Deny your commission until completion of exam
- Deny your commission for moral turpitude
- Issue a Letter of Warning
- Issue a Letter of Reprimand
- Suspend your commission
- Issue a 30 day Suspension conditioned on completion of training and exam
- Issue “Require registration” notice (for eNotarization) and Warning letter
- Revoke your commission
- Make an Involuntary Termination of your commission
- Completion of
  - Live training;
  - Online training; and
  - Exam
- Administer additional disciplinary actions as necessary
- Report you to law enforcement, i.e. the County Attorney



# Notary Codes of Ethics

- The notary shall act as an impartial witness and not profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.
- The notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.
- The notary shall not execute a false or incomplete certificate, nor be involved with any document transaction that the notary believes is false, deceptive or fraudulent.



# Notary Codes of Ethics

- The notary shall record every notarial act in a bound journal or other secure recording device and safeguard it as an important public record.
- The notary shall always be satisfied that the individual appearing before the notary understands the contents of the documents to be executed or the oath to be administered, before proceeding.
- The notary shall always satisfy himself or herself as to the identity of the individual appearing before the notary.





# Notary Codes of Ethics

- The notary shall never perform a notarial act in which the notary is a party in interest or from which the notary stands to benefit.
- The notary shall exercise extreme care to insure that the notarial seal, stamp and records are kept in a safe place and not used by any other person.

Compiled from  
“Notary Public Code of Professional Responsibility,” National Notary Association  
and  
“Code of Ethics,” American Society of Notaries





Thank you!